

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
CORPUS CHRISTI DIVISION

FRENCH ELLISON TRUCK CENTER,  
LLC,

Plaintiff,

VS.

SOUTH TEXAS TRUCK CENTERS, LLC,  
MIKE STRICKER, EDWARD HERNANDEZ,  
ALYSSA ROSENBAUM, and  
JASON MIMS

Defendants.

CASE NO. 2:18-CV-369

(ON REMOVAL FROM THE 214<sup>TH</sup>  
JUDICIAL DISTRICT COURT,  
CAUSE NO 2018DCV-3345-F  
NUECES COUNTY, TEXAS)

**DEFENDANTS SOUTH TEXAS TRUCK CENTERS, LLC,  
MIKE STRICKER, EDWARD HERNANDEZ, ALYSSA ROSENBAUM,  
AND JASON MIMS' NOTICE OF REMOVAL**

Pursuant to 28 U.S.C. §§ 1331, 1441, and 1446, Defendants South Texas Truck Centers, LLC, Mike Stricker, Edward Hernandez, Alyssa Rosenbaum, and Jason Mims (“Defendants”) hereby remove the above-referenced action from the 214<sup>th</sup> District Court of Nueces County, Texas, to the United States District Court for the Southern District of Texas. The grounds for removal are as follows:

## BACKGROUND

1. Plaintiff French Ellison Truck Center, LLC initially commenced this action on or about July 5, 2018, by filing Plaintiff’s Original Petition and Application for Injunctive Relief (“Original Petition”) in the 214<sup>th</sup> District Court of Nueces County, Texas, captioned *French Ellison Truck Center, LLC v. South Texas Truck Centers, LLC, and Mike Stricker* (Cause No. 2018DCV-3345-F).

2. Plaintiff served the Summons and Original Petition on Defendants on or about July 16, 2018. A copy of the Original Petition, together with all process and pleadings served upon Defendants in the state action, is attached hereto as Exhibit C. The Original Petition asserted one claim for Breach of Contract (Count VI).

3. On or about September 28, 2018, Plaintiff filed a First Amended Petition and Application For Injunctive Relief (“Amended Petition”) in the 214<sup>th</sup> District Court of Nueces County, Texas, captioned *French Ellison Truck Center, LLC v. South Texas Truck Centers, LLC, Mike Stricker, Edward Hernandez, Alyssa Rosenbaum, and Jason Mims*, adding three additional individual Defendants—Edward Hernandez, Alyssa Rosenbaum, and Jason Mims—and several additional claims.

4. Defendants, through counsel, accepted service of the Amended Petition on October 5, 2018. A copy of the Amended Petition, together with all process and pleadings served upon Defendants in the state action, is attached hereto as Exhibit C.

5. In the Amended Petition, Plaintiff added several additional claims that were not included in the Original Petition. In addition to the Breach of Contract claim, Plaintiff’s Amended Petition includes the following state law claims: Breach of Contract (Count VI), Tortious Interference with Business Relationship (Count VII), Breach of Fiduciary Duty (Count VIII), Texas Uniform Trade Secrets Act (Count IX), Unjust Enrichment (Count XI), and Conspiracy (Count XII). Plaintiff also, for the first time, added a federal law claim for violation of the Computer Fraud and Abuse Act (“CFAA”), 18 U.S.C. 1030 (Count X).

6. Plaintiff seeks the following types of relief: monetary damages, specific enforcement of a non-solicitation agreement, temporary and permanent injunctive relief,

prejudgment interest, all costs of court, attorney's fees, post-judgment interest, and such other and further relief as Plaintiff may show itself to be justly entitled.

7. Pursuant to 28 U.S.C. § 1446(b)(3), "If a case stated by the initial pleading is not removable, a notice of removal may be filed within 30 days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading . . . from which it may first be ascertained that the case is one which is or has become removable."

8. By filing this Notice of Removal on October 23, 2018, this Notice is filed within 30 days of the date when it could first be ascertained that the case was one which had become removable. Specifically, this Notice is filed within 30 days of service of the Amended Petition, which is the first paper from which it could first be ascertained that the cause was one that had become removable because the Amended Petition is the first paper in which Plaintiff pled a claim under the federal Computer Fraud and Abuse Act. Accordingly, this Notice of Removal is timely filed under 28 U.S.C. § 1446(b)(3).

9. Removal of this action is proper because it is a civil action within this Court's original jurisdiction pursuant to 28 U.S.C. § 1331.

**Federal Question Jurisdiction Under 28 U.S.C. § 1331**

10. This Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1331 because it arises under the laws of the United States, specifically the federal Computer Fraud and Abuse Act ("CFAA"), 18 U.S.C. 1030. *Beta Tech., Inc. v. Meyers*, No. CIV.A. H-13-1282, 2013 WL 5602930, at \*5 (S.D. Tex. Oct. 10, 2013) (upholding original subject matter jurisdiction on the basis of CFAA), *Ennis Transp. Co. Inc. v. Richter*, No. 3:08-CV-2206-B, 2009 WL 464979, at \*3 (N.D. Tex. Feb. 24, 2009) (retaining jurisdiction and holding court had subject matter jurisdiction on the basis of CFAA claim).

11. The Court's jurisdiction is further supported by the supplemental jurisdiction conferred by 28 U.S.C. § 1367. As such, Plaintiff's action may be removed to this Court under the provisions of 28 U.S.C. § 1441.

**All Other Requirements For Removal Have Been Met**

12. Pursuant to 28 U.S.C. §§ 1441(a) and 1446(a), the United States District Court for the Southern District of Texas, is the appropriate Court for filing a Notice of Removal from the 214<sup>th</sup> District Court of Nueces County, Texas, where the action was filed.

13. Pursuant to Local Rule 81, an index of matters being filed is attached as Exhibit A.

14. Pursuant to Local Rule 81, the docket sheet from the state court proceeding is attached as Exhibit B.

15. Pursuant to 28 U.S.C. § 1446(a) and Local Rule 81, copies of all pleadings, process, and orders served upon Defendants in this action are attached as Exhibit C.

16. Pursuant to 28 U.S.C. §1446(a) and Local Rule 81, confirmation that no orders were signed by the state court is attached as Exhibit D.

17. Pursuant to Local Rule 81, a list of all counsel of record is attached as Exhibit E.

18. Promptly after filing this Notice of Removal, Defendants will file a Notice of Filing Notice of Removal, along with a copy of the Notice of Removal, with the Clerk of the 214<sup>th</sup> District of Nueces County, Texas, and will serve written notice of the same on counsel for Plaintiff, all in accordance with 28 U.S.C. § 1446(d).

19. All Defendants consent to the removal of this action. Accordingly 28 U.S.C. § 1441(b)(2)(A) is satisfied.

20. If any question arises as to the propriety of the removal of this action, Defendants respectfully request the opportunity to file a brief and to make oral argument in support of its position that this cause is removable.

WHEREFORE, Defendants hereby remove the above-captioned cause from the 214<sup>th</sup> District Court of Nueces County, Texas, to the United States District Court for the Southern District of Texas, and request that further proceedings be conducted in this Court as provided by law. Defendants further pray for any other Order or relief which the Court may deem just and equitable.

Dated: October 23, 2018

Respectfully submitted,

SHOOK, HARDY & BACON L.L.P.

By: /s/ Sonila Themeli

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**CERTIFICATE OF SERVICE**

I hereby certify that on October 23, 2018, the above and foregoing document was filed electronically through the CM/ECF system and was served via regular U.S. mail, postage prepaid, and/or by electronic mail, on all known counsel of record addressed as follows:

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